



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 19, 1995

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
Legal Affairs Division
P.O. Box 99
Huntsville, Texas 77342-0099

OR95-1466

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 36527.

The Texas Department of Criminal Justice (the "department") received an open records request for the department's records pertaining to an inmate's attempt to smuggle marijuana into prison. You contend the requested information is excepted from required public disclosure under the "law-enforcement" exception, section 552.108 of the Government Code.¹

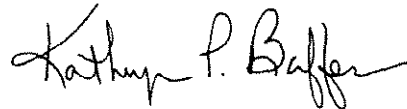
When a governmental body claims section 552.108, the relevant question this office must address is whether the release of the requested information would undermine a *legitimate interest relating to law enforcement or prosecution*. Open Records Decision No. 434 (1986). Whether disclosure of particular records will unduly interfere with law enforcement must be decided on a case-by-case basis. Attorney General Opinion MW-381 (1981). However, where an incident involving allegedly criminal conduct is under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information which relates to the incident. Open Records Decision Nos. 372 (1983), 474 (1987).

¹Because we resolve your request under section 552.108, we need not address the applicability of the other exceptions you raise.

In this instance you inform this office that the requested information directly pertains to a "criminal investigation report which will be submitted to the grand jury." Accordingly, we conclude that the department may withhold the requested information at this time pursuant to section 552.108.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Records Division

KPB/RWP/rho

Ref.: ID# 36527

Enclosures: Submitted documents

cc: Mr. F.T. Loftin, Sr.
1400 Green Briar Road
Royse City, Texas 75189
(w/o enclosures)